

**ADEQUATE PUBLIC FACILITIES  
ADVISORY COMMITTEE**

**ACTION MINUTES**

**MEETING OF August 11, 2011**

The meeting was convened at 7:05 p.m. In attendance – Julie Palakovich Carr, Dennis Cain, Soo Lee-Cho, Tom Gibney, Charles Littlefield, Jason Anthony Roald Schrack, and Sean Hart. Eric Siegel was absent.

The chair moved, seconded by Sean Hart, to approve the agenda with the addition of a discussion of future actions following this meeting

The committee reviewed the minutes of the August 4 meeting. Several revisions were noted. Tom Gibney moved, seconded Charles Littlefield, to approve the revised minutes. The vote was 8-0.

The committee then began a review of the draft school recommendations as proposed by the chair and distributed at this meeting. It was noted that Eric Siegel will be given an opportunity to vote via e-mail on these items. (Eric voted in an e-mail dated August 12, 2011; vote tallies below reflect his votes). Dennis Cain asked how many committee members have children in Rockville schools. Tom Gibney, Charles Littlefield and Sean Hart responded yes.

The committee discussed Item 1 – a, b, and c – It was agreed that 1a and 1b should be combined as an introductory statement. After discussion on 1c and whether it was worded strongly enough, the committee decided to combine all three subsections into one introductory statement with reference back to the overall report introduction and issues identified. Roald Schrack moved, seconded by Tom Gibney, to approve the revised item 1. The vote was 9-0 in favor.

For Item 2, the language was revised to broaden the amount and type of enrollment data to be posted, including data on the clusters that have schools that don't serve Rockville residents. Tom Gibney moved, seconded by Dennis Cain, to approve Item 2 with the revisions. The vote was 9-0 in favor.

For Item 3, clarification revisions were made with regard to the high/mid-rise multi-family units and add more survey options. Dennis Cain moved, seconded by Tom Gibney to approve the revised recommendation. The vote was 8 to 1, with Sean Hart voting no.

For Item 4, minor revisions were made and Tom Gibney moved, seconded by Roald Schrack to approve the revised recommendation. The motion passed 9-0.

Discussion turned to Item 5, the treatment of the grandfathered projects. Sean Hart recommended not changing the methodology in subsections a and b, and was OK with subsection c. There was general discussion about concerns on how and whether the grandfathered projects should be re-visited. Roald Schrack proposed reassessing the school capacity issue at such time as the potential for development exists to reassess the capacity reserved by these projects. Tom Gibney suggested facilitating a meeting among the owners of these projects. Ultimately, the committee decided to insert commentary on the grandfathered projects issue in the background discussion.

For Item 6, there was little support for the language as proposed to move the test years to 2 and 3. It was suggested that the committee recommend that the City keep the current timeframe for the schools test (years 1 and 2). It was moved by Charles Littlefield, seconded by Sean Hart to approve this revised approach. The vote was 5-3-1, with Charles Littlefield, Dennis Cain, Sean Hart, Roald Schrack and Tom Gibney voting in favor, Soo Lee-Cho, Julie Palakovich Carr and Eric Siegel voting against, and Jason Anthony abstaining.

The chair offered a motion to recommend that the Planning Commission reevaluate the issue test years. Soo Lee-Cho seconded the motion. The vote was 4-4-1, with the chair, Soo Lee-Cho, Eric Siegel and Jason Anthony voting favor; Tom Gibney, Dennis Cain, Charles Littlefield and Sean Hart voting no, and Roald Schrack abstaining.

There were three separate options put forth by the chair and the straw polls taken regarding the options were as follows:

- 1) Do not move threshold from 110% to 120%  
3 members in favor – Dennis Cain, Charles Littlefield, Sean Hart
- 2) Move from 110% to 120%  
4 members in favor – Soo Lee-Cho, Tom Gibney, Eric Siegel and Roald Schrack
- 3) Consider allowing the Mayor and Council to grant waiver of schools test on a case-by-case basis and approve certain “valuable/worthwhile” projects within the 110% to 120% range  
2 members in favor – Julie Palakovich Carr and Jason Anthony

On Item 8 revisions were discussed on how and when to impose the school facility payment. It was agreed that the city should explore this concept for any new development. The City and County should open a dialog on how to administer the school facility payment. Roald Schrack moved, seconded by Dennis Cain to approve the revised recommendation. The motion passed, 7-0-2, with Soo Lee-Cho and Charles Littlefield abstaining.

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For Item 9, minor revisions were made to the language regarding citizen surveys. Charles Littlefield moved, seconded by Jason Anthony, to approve the recommendation with the minor revisions. The motion passed 9-0.

For Item 10, minor revisions were made to the language regarding periodic solicitation of comments on APFO. Charles Littlefield moved, seconded by Tom Gibney to approve the revised recommendation. The motion passed 9-0.

For Item 11, reevaluation of the APFO, the language was revised to recommend that the Planning Commission review the APFO at least every 5 years. Sean Hart moved, seconded by Dennis Cain, to approve the revised version. The motion passed, 9-0.

The final version of the school recommendations as voted on by the committee is attached to these minutes.

The discussion moved to preparation of the final report. The chair asked that the other teams check back next week, with circulation of their respective sections for comments. The final drafts should be completed by August 24, and final committee inputs on all section by September 4. See the attached schedule for a full action calendar.

The chair offered thanks to all participants. Dennis Cain also offered thanks.

The meeting was adjourned at 11:18 p.m.

Attachments: Draft school recommendations for discussion  
Draft school recommendations as approved by the Committee  
Action calendar

Attachment 1

APFO Review Committee Draft Recommendations  
For Discussion August 11, 2011

**School Recommendations**

1) a) The Committee recognizes the difficulty of projecting future student enrollment. No methodology is 100% accurate, particularly when making projections for enrollment at individual schools. The City should recognize that student enrollment projections provided by MCPS are not a guarantee of future student enrollment. Therefore, for the purposes of implementing the APFO schools test, the actual capacity of schools may vary significantly from what was expected at the time of development approval.

1) b) To address the above issues, the City should create a standing commission on education to advise Mayor and Council on K-12 education within the City and to monitor enrollment in the City's schools. The commission should work to better understand the cause of variations in student enrollment caused by demographic factors, perceived school reputation, and other issues. The commission should monitor actual student enrollment and student generation rates by housing type in order to correct uncertainties in the enrollment projections. Membership of the commission should be comprised of individuals with expertise in education, statistics, demographics, and other applicable fields, and should be determined by Mayoral appointment and subject to approval by a majority vote by Mayor and Council.

1) c) Based on advice of, and in coordination with, the standing commission on education, the City should work with MCPS to eliminate the causes of the serious overcrowding of most Rockville schools and improve the accuracy of annual projections of student enrollment.

2) To promote greater transparency of the process and open government, the City should post enrollment projections for each school that services Rockville students, as well as student generation data for development projects approved by the City, on the City website. This data should be provided in its raw database form to enable citizens to understand the data relationships, and develop spreadsheets and reports that address issues affecting them.

3) The City should encourage the County to update the student generation rates from all housing types, with particular emphasis on mid-rise, multifamily buildings. This could be completed by survey, using demographic data, and/or GIS data of actual student enrollment.

4) The Mayor and Council should speak with the Board of Education about the urgency of the need for a new elementary school and additional classrooms in the Richard Montgomery cluster and the need for additional capacity at the middle school level in this cluster to address overcrowding at Julius West.

5) a) Previously approved projects that were grandfathered into the APFO should be required to make a declaration to the City on an annual basis regarding when they plan to file for a building permit and/or start construction.

5) b) Depending on the timeline of each grandfathered project, the City could consider changing its methodology for when to count the capacity as reserved; for grandfathered projects that will not start building within the next few years, the City may choose to not count the capacity from these projects as reserved at this time, but would count in the future when the projects are moving forward.

5) c) The Planning Commission should also explore a mechanism for transferring development rights between projects located within the same school service area. This would allow developers who are unable to pass the schools test to buy reserved school capacity from developers whose projects were grandfathered into the APFO.

6) The APFS should be amended to test for available school capacity in years 2 and 3 instead of in years 1 and 2. This is a more realistic time frame in which a development project could be built and start to generate students. With an improved enrollment projection analysis, there is more comfort with a testing period that is farther out on the time horizon.

7) Alternative #1: Based on all of the data gathered and anecdotal information provided, the Committee is mindful of the fact that virtually all of the City's schools that are overcrowded, some in excess of 135%. This overcrowding has resulted in the installation of portable classrooms, where needed. In addition, the overcrowding has had a negative impact in particular on school core facility capacity, including but not limited to the provision of lunch to students, library, computer, art and music classes, and available space for playgrounds.

Given the County's recent decision to eliminate Rockville from potential CIP funding for school facility development, the status quo is not acceptable, despite Rockville's overcrowding problems. The City must create ways to incentivize the county to focus on Rockville's school facility needs like other geographic areas of the County. Moreover, with better accuracy in projecting school student generation rates through some of the methods and activities recommended in this report, progress can be made to better align the City with the County's interests. To that end, while the Committee does not address all aspects of the school tests that differ between the County and City, the Committee recommends that the APFS should be amended to increase the threshold at which a school fails the APFS test from 110% to 120%, to demonstrate to the County its a good faith effort to better align with the County APFO. Again, the Committee does not come to this recommendation lightly. Should County and City interests fail to approach one another over the passage of a reasonable time interval, the City may revisit this standard again. In order to allow time for schools in Rockville to adjust to the new capacity limit, to solicit public input, and to avoid perceptions of favoritism toward developers who have recently submitted applications and those who need time to account for the change in

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law, this change should not be immediate, but should have an effective date at a reasonable interval in the future.

7) Alternative #2: The APFS should be amended to increase the threshold at which a school is considered overcrowded from 110% to 120%.

The intention of this change is to align the City with the County's projections and to work with them through the commission to ensure that adequate public facilities are in place when student enrollment dictates the necessity. This alignment would be in concert with the cited recommendation for the commission to work with the MCPS in improving the accuracy of predicting future needs.

The establishment of a methodology for collecting the facility payment by the City would be a good faith acknowledgement by the City doing whatever it could to defray some of the costs and recognition of the burden on the County for administering the budget in an equitable manner across all of the County needs.

This is also acknowledged to be a rather large good faith concession by the City to pursue a collaborative effort with the MCPS and a leap of faith in pursuing a more productive relationship. In an environment of competing interests one party must take the first step to achieve compromise, and we propose it to be the City of Rockville.

7) Alternative #3: The planning commission should consider ways to establish a new waiver category for projects that fail the 110% schools test, on a case by case basis, in order to lift the across-the-board residential moratorium in certain parts of the City, and to allow for low-impact developments, such as temporary housing for government contractors and researchers, etc., to move forward. Such waivers should be conditioned on some form of input by the affected residents, or other stringent criteria (e.g. PTA approval, supermajority, public hearing, referendum, etc.).

8) Alternative #1: The City should explore imposing a school facilities fee on new development projects that would cause the capacity of an affected school to exceed 105% but not exceed 120%. In order to pursue this option, the City should explore collecting a school facilities fee independently from the County and determine a means by which to administer the collected funds to assist the County in providing for the school facilities necessary to support growth.

8) Alternative #2: The City should explore imposing a school facilities fee on new development projects that would cause the capacity of an affected school to exceed 105% but not exceed 120%. In order to pursue this option, the City should explore whether it may legally impose and collect a school facilities fee independently from the County or whether the City should sign a Memorandum of Understanding with the County for the County to collect the fee on behalf of the City. A State Attorney General Opinion from November 2004 suggests that a municipality, such as the City of Rockville, may have the authority under certain circumstances to pursue such fees. However, subsequent legislation at the state level has failed to make this authority definitive. Nonetheless, the

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City should employ its lobbying efforts with the state, in coordination with County support and efforts, to obtain this needed authority. A successful effort will demonstrate the City's resolve to better partner with the County in the best interests of the City's school children. Also, a successful effort will create another opportunity to incentivize the County to devote needed resources to build more City schools.

**Citizen survey**

9) Future Rockville Citizen Surveys should include more questions to determine residents' opinions about the pace of development within the City and the balance of quality of life, availability of public facilities, and new development.

10) The City should periodically engage residents' and commercial stakeholders' opinions on the impacts and outcomes of the APFO, especially on key issues such as schools, transportation, and development.

**Reevaluation of the APFO**

11) The Planning Commission should review the APFO every five years in order to consider what actions have been taken or not taken because of the APFO, has the rate of student growth been affected by the moratorium imposed by the APFO, and other issues.

Attachment 2

APFO Review Committee Draft Recommendations  
As Approved August 11, 2011

**School Recommendations**

1) The City should create a standing commission to advise Mayor and Council on K-12 education within the City and to monitor enrollment in the City's schools. The commission should work to better understand the cause of variations in student enrollment due to poor projections by MCPS, demographic factors, perceived school reputation, and other issues. The commission should monitor actual student enrollment and student generation rates by housing type in order to identify inaccuracies in the enrollment projections. Membership of the commission should be comprised of individuals with expertise in areas such as education, statistics, demographics, and other applicable fields, and should be determined by Mayoral appointment and subject to approval by a majority vote by Mayor and Council.

Based on the advice of, and in coordination with, the standing commission on education, the City should work with MCPS to alleviate the serious overcrowding in schools that service Rockville residents and to improve the accuracy of annual projections of student enrollment.

2) To promote greater transparency of the process and open government, the City should post and maintain the MCPS projections and actual enrollments, from 2005 forward, for each school and cluster that services Rockville students on the City website. The City should also post and maintain student generation data for development projects approved or under consideration that impact Rockville schools. This data should be provided in its raw form to enable citizens to understand the data relationships and perform their own analysis.

3) The City should strongly encourage the County to more regularly update the student generation rates from all housing types, with particular emphasis on high-rise and mid-rise, multifamily buildings which are expected to be the primary source of new development in the future. This is currently conducted by survey, and should be supplemented by demographic data and/or GIS data of actual student enrollment.

4) The Mayor and Council should meet with the Board of Education about the urgency of the need for a new elementary school and additional classrooms in the Richard Montgomery cluster and the need for additional capacity at the middle school level in this cluster to address impending overcrowding at Julius West, and report regularly on the status to the residents of Rockville.

5) The timeframe for the schools test should be kept as is currently cited in the APFS (1 and 2 years).



6) The City should explore the concept of imposing a school facilities payment on new development projects that would cause any school serving Rockville residents to become overcapacity. This should include a discussion of at what thresholds the payment should be applied.

Note: The committee was not able to attain a majority on any recommendation regarding the 110% threshold at which the APFS bars further development within a school cluster. There was no discussion of raising the threshold above 120%. Multiple minority reports will be presented.

### **Citizen survey**

7) Future Rockville Citizen Surveys should gather more information to determine residents' opinions about the pace of development within the City and the balance of quality of life, availability of public facilities, and new development.

8) The City should periodically solicit residents' and commercial stakeholders' opinions on the impacts and outcomes of, and issues with the APFO.

### **Reevaluation of the APFO**

9) The Planning Commission should review the APFO at least every five years.

Attachment 3

Action Calendar

**August 24:** Deadline for teams to share their draft section language with the committee (this milestone has already been met by the teams preparing the fire/EMS, water/sewer, and waivers sections).

**September 4:** Deadline for all committee members to provide their initial comments/edits on the draft sections. As a reminder, these changes should be sent to the entire group. (As with the first milestone, several of you have already started this step.)

**September 18:** Deadline for teams to revise their sections based on input received from committee members (send to me when completed). Deadline for committee members to prepare their minority report(s)/plurality (send to me when completed).

**September 20:** Julie will merge all of the sections into one document, including an introduction and appendices.

**September 30:** Deadline for first round of comments/revisions on the entire report. (Please note that this will not be the last chance for input on the report, but I hope that many, if not most, of the issues with the report will be addressed by this point. We will establish further deadlines as we get closer to this date.)